

(2009) 11 MAD CK 0128

In the Madras High Court

Case No : Writ Petition No. 4921 of 2009 and M.P. No's. 1, 2, 4 and 5 of 2009

G. Neelappan and S. Mohanakrishnan

APPELLANT

Vs

Tamil Nadu Small Industries Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Citation : (2009) 11 MAD CK 0128

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : V. Prakash, SC for S. Dhiraviya Raj, for the Appellant; A.E. Chelliah, for S. Sathiamurthy, for Respondent No. 1, N. Senthilkumar, AGP for Respondent No. 2 and No Appearance for Respondent No.3 to 6, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioner has filed the present writ petition seeking for a writ of mandamus calling for the records of the respondents 1 and 2 in connection with the G.O.(D) No. 124 dated 27.12.2007 and the consequent proceedings of the 1st respondent in Ref. No. 117/EB4/2007 dated 04.07.2008, Ref.4117/EB4/2007-2 dated 04.07.2008, Ref. 3113/EB4/2008 dated 18.12.2008 and Ref.3113/EB4/2008 dated 31.12.2008 and also the consequent G.O.(D) No. 41, Micro, Small and Medium Industries (E) Department, dated 25.03.2009 and quash the same and further direct the respondents 1 and 2 herein to consider the petitioner being posted/promoted to the post left vacant on non-extension of service of respondents 3 to 6 herein.

2. The respondent TANSI is a Corporation registered under the Companies Act, 1956. The respondent is empowered to frame its own rules and regulations for its smooth functioning and it is also governed by TANSI Service Rules and also governed by various Government Orders issued then and there with regard to the service conditions of its employee. The respondent Corporation has not been making any major recruitment for more than 25 years and hence vacancies caused by promotion could not be filled up. Since more persons are retiring on

superannuation every year, there is an acute shortage of man power. This issue was discussed by the Board of TANSI in various meetings and the need to increase the man power to optimum level by outsourcing etc. was deliberated and substantially it was decided to re-employ only those who retired on Contract basis. Therefore, the representation was made to the Government seeking permission to consider the re-appointment of retired persons on contract basis. Accordingly, the Government issued a G.O. No. 124 and instructions have been issued directing that, re-employment of retired Corporation/Board Employees should not be proposed in a routine manner and in extraordinary cases if it is necessary it should be for a period of maximum of 6 months to accomplish the job of special nature and that such re-employed person has to finish the job assigned in the next couple of months. During such re-employment, the person is eligible to draw 50% of the emoluments (Pay+DA) last drawn. On the basis of the G.O., the TANSI has made a proposal to the Government. The Government has also carefully considered and accepted the proposal of the Chairman and Managing Director of the TANSI and directed that the following officers namely Mr. R. Mohanakrishnan, Works Manager, Mr. K.P. Dhanasekaran, Manager (Engg), Mr. T. Mani, General Superintendent, Mr. M. Shajohan, Works Manager may be re-appointed for a period of six months from the date of retirement. On the basis of the order issued by the Government in the above said G.O., the respondents 3,4 & 5 were re-appointed. The Chairman & Managing Director In-charge of TANSI has passed a proceedings No. 3113/EB4/2008, dated 18.12.2008, whereby it was ordered to re-employ Mr. Sripathy, Manager (Furniture & Mktg.), TANSI Corporate Office in the same post for a period of six months commencing from 01.12.2008 (i.e. from 01.12.2008 to 31.05.2009) and he shall act as Managing Director with effect from 01.12.2008 with consolidated Salary of Rs. 31,000/- p.m. during his re-employment period. Subsequently, the Chairman and Managing Director of TANSI/first respondent has passed another proceedings No. 4117/EB4/2007, dated 04.07.2008, ordering to re-employ Thiru. R. Mohanakrishnan, on contract basis for a period of nine months commencing from 01.07.2008 and he shall act as Works Manager and the TANSI has passed another proceedings No. 4117/EB4/2007-2, dated 04.07.2008, ordering to re-employ Thiru. K.P. Dhanasekaran, on contract basis for a period of one year commencing from 01.07.2008 and he shall act as Manager. Since, the second re-employment order was passed by the first respondent to respondents 3 and 4, the petitioners 1 and 2, who are the prospective officers to be promoted to the above said post challenged the second re-employment order on the basis of G.O. No. 124 dated 27.12.2007, by way of filing this writ petition.

3. Mr. Prakash, learned senior counsel appearing for the petitioners submitted that the Government has passed G.O. No. 124 giving the power to re-appoint the retired persons only for a period of 6 months. But even after completion of 6 months, the second re-employment has been made without exercising any power under any Rule. Further in his submission, it is stated that when the G.O.124 dated 27.12.2007 gives a limited power to appoint any person with special

knowledge for a period of maximum 6 months to accomplish a job of special nature, the action of re-appointment even after completion of re-employment period is arbitrary and on that basis he prays for allowing the writ petition.

4. Dr. A.E. Chelliah, the learned senior counsel appearing for the first respondent has brought to the notice of this Court by contending that the re-appointment of the respondents 3 to 6 made basically are not against any rule or any G.O. Rule 24 of the TANSI Service Rules gives ample power to the respondent to appoint any person to any post on special terms to be mutually agreed upon between the company and the person and provision made in such contract shall apply to any person so appointed.

It is his further submission that the above referred to G.O. has given only a limited power to make re-employment of the retired officers for 6 months but as per Rule 24, the first respondent has got enormous power. Therefore, the petitioners are not entitled to challenge the power of re-appointment as the respondents 3 to 6 are accomplished with such work which cannot be done by any ordinary person. Since in the assessment of the 1st respondent, the respondent 3 to 6 are more senior endowed with rich experience, the first respondent has got powers to grant further extension of time for a further period of 9 months and so 9 months has been offered. Since, the scope of the petitioners to occupy the post to which the respondents have been re-employed is blocked, the petitioners cannot be permitted to say that their chances are blocked and hence, re-employment is arbitrary and unwarranted.

5. Heard the counsel on both sides. The G.O. No. 124 has been passed on the basis that even after respondents 3, 4, 5 and 6 were re-employed for six months period the work which was allotted by the respondent could not be completed. It is always expected that the work assigned to a person would be accomplished by extending further in the period of re-employment. Since, the work called for is of special expertise, the 1st respondent sought approval from the Government for re-employment of the retired persons from Public Sector Undertaking on contract basis. Accordingly the respondents have been appointed only on contract basis. Therefore, the respondents 3 to 6 were re-employed to accomplish the left out work or balance work and the same was found fault with by the petitioner. In any event, as rightly urged by the learned senior counsel for the respondent that the respondent has got enormous powers under Rule 24 of the TANSI Service Rule. Rules 24 and 25 are extracted here under.

24. Appointment by Contract:

(a) Notwithstanding the provisions in these rules or any other rules made by it, the Board shall have powers to appoint any person to any post on special terms to be mutually agreed upon between the Company and the person and the provision made in such contract shall apply to any person so appointed.

(b) Provided that in every contract made in exercise of the powers conferred by these rules it shall further be provided that in respect of any matter in respect of

which no provision has been made in the contract, the provision of these rules shall apply.

(c) A person so appointed shall not be regarded as belonging to the category to which he is appointed and shall not be entitled by reason only of such appointment to any preferential claim to any other appointment in that or any other group or category.

25. Re-Employment of Pensioners:

The Corporation may re-employ for a period not exceeding one year at a time persons who have retired from the service of the Corporation in any group of service or from Central and State Government Departments and other public undertakings. The re-employment of such a person in any category of service shall not be regarded as a first appointment to that group of service. On such re-employment the pay of the person in the new post shall be so fixed that the pay plus his pension and the pension equivalent of the gratuity drawn does not exceed the pay last drawn by him before retirement. Provided such re-employment should cease on the completion of 60 years of age, unless this is relaxed by the Board.

A bare reading of Rule 24 and 25 clearly indicates that the respondents are endowed with sufficient power to make re-employment of any retired officers. However, after getting special permission from the Government and in subsequent G.O. No. 124, they have extended the re-employment only for a limited period of 6 months. That does not mean that the respondent has no power to go for re-employment of the retired persons on contract basis when Rule 24 exclusively gives power to appoint persons on contract basis. The petitioner cannot be allowed to say that the respondent has no power to re-employ. In any event, the persons who have got re-employed, also had retired from service and the petitioners 1 and 2 are still having sufficient number of years of service before retirement. The first petitioner will retire on 30.06.2010 having 8 months to leave from the services and the second petitioner is due to retire on 31.08.2010 also having 10 months service. In view of the fact that the grievance of the petitioners is only an apprehension that their chances of getting promotion to the higher post is affected, the writ petition cannot be entertained. Accordingly, the writ petition is dismissed. No costs. Accordingly, the miscellaneous petitions are closed.